

Achieving the Broadband Vision for ALL Americans

NECA, NTCA, OPASTCO, and WTA (The Rural Associations) applaud the FCC for the intent of the National Broadband Plan (NBP) to harness the enormous potential of broadband to improve the lives of Americans, revitalize the economy, and deliver significant and well documented benefits in the areas of health care, education, energy and the environment, economic opportunity, government performance, civic engagement and public safety. But certain provisions of the NBP, as currently written, will have serious unintended consequences for rural America that must be addressed if all Americans are to realize and benefit from the NBP's broadband vision.

Our member companies are small rural carriers that serve remote and sparsely populated areas where there often is no business case for building and operating networks, absent universal service support. Our members rely upon support from the universal service fund (USF) and intercarrier compensation (ICC) to recover the majority of their network deployment and operating costs. Proposals to redirect this support to larger carriers' unserved areas – or eliminate it altogether – will cause our rural networks to fail or suffer severe degradation, resulting in less, not more, broadband service for rural consumers and businesses. History demonstrates that shifting from proven rate-of-return (RoR) cost recovery methods to price cap "incentive" regulation is likely to minimize, if not eliminate, incentives to expand and improve broadband networks in costly rural areas. The reforms proposed in the NBP, including the expectation that urban consumers will have 100 Mbps broadband in urban areas while limiting cost recovery for rural networks to 4 Mbps, risk creating and perpetuating a digital divide with serious negative consequences for rural consumers and rural economies.

To address these shortcomings and risks, the Rural Associations respectfully recommend that any USF and ICC reforms serve the following objectives:

1. ENSURE THAT SUFFICIENT UNIVERSAL SERVICE FUNDS ARE AVAILABLE

The FCC should take immediate steps to make the USF more sustainable and capable of truly achieving the NBP's broadband goals.

- a. Eliminate the Identical Support Rule for non-incumbent USF recipients.
- b. Fund only one fixed and one mobile provider of last resort (POLR) in each geographic area.
- c. Avoid arbitrary caps on the USF and expand the USF contribution base to provide the support necessary to do the job outlined by the NBP

2. APPROPRIATELY STRUCTURE THE NEW CONNECT AMERICA FUND (CAF)

After an appropriate transition period, replace the current USF mechanisms with a new CAF that includes appropriate provisions to ensure efficiency and accountability, while providing appropriate incentives for the construction and operation of the rural networks necessary to achieve the NBP's goals. The CAF should recognize the legitimate differences between small rural carriers and larger carriers that serve both rural and urban markets.

- a. Small Rural Carriers
 - i. Each CAF recipient would be required to act as the POLR throughout its service area and satisfy robust availability, affordability, and service quality obligations.
 - ii. The CAF would work in concert with RoR regulation to provide incentives for needed infrastructure investment, and support the actual cost of deploying and operating broadband-capable networks, subject to reasonable measures to ensure efficient operations.
 - iii. Carriers would be given the option to reduce intrastate access rates to interstate levels, with federal universal service support providing replacement cost support – subject to a reasonable local rate benchmark.
- b. Larger Carriers
 - i. For larger POLRs that have not deployed broadband in rural portions of their service areas, the FCC should establish rules that ensure CAF support is appropriately tailored to enable such deployment in an efficient and accountable manner.

3. ENSURE THAT ALL AMERICANS HAVE ACCESS TO REASONABLY COMPARABLE BROADBAND SERVICES

To avoid the creation of a harmful "Digital Divide," the FCC should focus on enabling POLRs to offer broadband services and rates that are reasonably comparable to those in urban areas, in accordance with Section 254(b)(3).

The following pages provide additional details on these policy proposals.

An Action Plan for Promoting and Sustaining Rural Broadband

Small rural providers have made tremendous strides deploying broadband-capable networks throughout their service territories. Despite serving sparsely populated areas representing nearly 40% of the country's land mass, these carriers have deployed at least DSL-capable broadband to over 92% of their subscribers as of 2009 (up from 79% in 2005). With long-standing commitments to their communities, these carriers have been gradually moving forward with investments in scalable network technologies that support today's and tomorrow's broadband-enabled applications and services. However, the job is far from complete in many places to reach the speeds and capabilities envisioned by the National Broadband Plan (NBP), and the long-term availability and affordability of broadband in rural America needed to achieve desired adoption rates depends upon continuing sustainable support for investment and operations in hard-to-serve areas.

Unfortunately, these investments and operations are at risk, and rural consumers and small businesses could suffer. While policy-makers have indicated that affordable universal broadband should be a priority objective, certain NBP universal service fund (USF) reform proposals could have the unintended consequence of undermining this objective. Reforms focused primarily on reaching "unserved" areas fail to acknowledge that many areas have access to broadband today precisely because high-cost universal service funding continues to support those investments and operations. Such reform proposals also fail to recognize that many rural areas may appear "served" under current definitions of broadband, but not under the definitions contemplated by the NBP. Proposals to redistribute USF funds not only run the risk of limiting future investment in broadband, but also present the very real prospect that existing investments in rural broadband infrastructure will become unsustainable. This means that fewer rural Americans might ultimately enjoy access to affordable high-speed broadband services as a result of reform.

NECA, NTCA, OPASTCO, and WTA ("Rural Associations") recognize that reform is needed to ensure that affordable, high-speed broadband becomes and will remain available to all Americans. The Rural Associations have been working together to ensure that USF reform promotes and sustains investment in broadband services throughout the United States, and they have developed the following reform proposal for consideration by policy-makers.

The New Connect America Fund:

- The FCC should take several near-term steps to reduce demand on the federal USF and increase the contribution base: (1) eliminate the identical support rule for non-incumbent USF recipients; (2) fund only one fixed and one mobile provider-of-last-resort in each geographic area; and (3) require all broadband Internet access providers and others whose business models rely upon broadband access to contribute to USF. Such steps are essential to eliminate unjustifiable support distributions while also allowing for the fund growth necessary to achieve and maintain ubiquitous high-speed broadband.
- After an appropriate transition period, the FCC should replace existing USF mechanisms with a new Connect America Fund (CAF) to support networks that offer both broadband and quality voice services. Each CAF recipient would be required to act as the provider-of-last-resort and satisfy robust availability, affordability, and quality-of-service obligations throughout the geographic area for which it receives funding.
- For small providers-of-last-resort operating in rural study areas, the CAF would work in concert with rate-of-return regulation to support the actual costs of deploying and operating broadband-capable networks. Recoverable costs would include "middle mile" and Internet connectivity costs needed to ensure that consumer broadband services operate at adequate speeds, as well as network costs that would no longer be recoverable through a reformed intercarrier compensation system.
- To reflect the increasing use of local networks for broadband services, some loop costs currently allocated to the intrastate jurisdiction for cost recovery would be assigned to the interstate jurisdiction based upon each provider's broadband adoption rate – as broadband adoption increases over time, a greater percentage of costs would be reassigned.
- Recovery of actual costs from the CAF would be offset by a broadband Internet access benchmark that reflects the cost of comparable broadband service in an urban area. Under the new program rules applicable to small rural providers, the CAF would promote efficient investment and enable recovery of the specific costs associated with the deployment and ongoing operation of broadband-capable networks in hard-to-serve, high-cost rural areas.
- For larger providers-of-last-resort who have not deployed broadband in rural portions of their service areas, the FCC should establish additional rules to ensure that CAF funding is appropriately tailored to incent and support such deployment.



Rate of Return Regulation: A Broadband Success Story

Rate-of-return (RoR) regulation represents a significant broadband deployment success story. This regulatory framework has enabled carriers operating in hard-to-serve high-cost areas to install and maintain critical high-speed connections between rural communities and the world. The economic and civic livelihood of rural communities will depend on affordable access to broadband services and the continued deployment and operation of advanced networks – regulators and policy-makers should replicate this broadband success story rather than replace it.

NECA, NTCA, OPASTCO, and WTA (“Rural Associations”) have been working together to ensure recognition of the essential role that RoR regulation plays in the deployment and provisioning of broadband in rural areas. At a time when broadband deployment has been identified as a priority national objective, the Rural Associations are actively urging decision makers to preserve this proven framework.

The Case for RoR Regulation – an Effective Model for Broadband Deployment:

- RoR regulation offers carriers in high-cost rural areas a degree of stability and predictability in the cost recovery they need to invest in networks.
- RoR regulation keeps rates fair and affordable by providing limited returns on investment at levels set by regulators. It also ensures that carriers have sufficient revenues to meet quality-of-service obligations and customer demands.
- RoR regulation does *not guarantee* a specified level of return on investment – it only provides carriers with an opportunity to recover their expenses and taxes and to earn an authorized return on capital investments.
- There are procedural and structural safeguards under RoR regulation to constrain waste and preclude excessive earnings. Where a carrier exceeds the authorized rate of return, it may be required to refund the excess and/or lower its rates. Other constraints include quality-of-service commitments and extensive financial reporting requirements under governmental oversight, as well as review and audit by lenders and other entities.
- RoR promotes investment throughout areas where it might likely otherwise be uneconomical to do so. RoR regulation has helped carriers to deliver on the promise of broadband for rural America – those areas that rely most heavily upon broadband to access essential economic, civic, educational, and medical resources.
- As of 2009, RoR-regulated carriers had deployed DSL to over 92% of their subscribers (up from 79% in 2005), and many are investing in innovative broadband technologies. Such forward-looking installations represent prudent investment; for example, deploying scalable technologies such as fiber will reduce the ongoing cost of operating plant while also increasing speeds for consumers.
- Price cap regulation on the other hand tends to drive investment where risk is least and the likelihood of recovery is greatest and quickest. It often provides little, if any, incentive to invest in many parts of rural America where the costs to deploy are highest and the potential customer base is small.

Rate-of-return regulation has enabled small, community-based communications providers in rural America to build and maintain the networks necessary to bring essential broadband services to rural communities. Preserving this proven effective cost-recovery framework is critical to continued broadband deployment.



Intercarrier Compensation Reform: A Streamlined Approach for a Solid Foundation

Rural rate-of-return (RoR) carriers have relied upon intercarrier compensation (ICC) and universal service cost recovery mechanisms to deliver high-quality services in hard-to-serve high-cost areas. The economic and civic livelihood of rural communities will depend on affordable access to and the continued deployment and operation of advanced networks.

At a time when IP-enabled services are expanding and support of broadband availability is a national objective, it is hard to predict how future developments will affect interconnection and the exchange of traffic between carriers. Efforts at “comprehensive” reform have become so complex that they repeatedly collapse.

NECA, NTCA, OPASTCO, WTA (“Rural Associations”) have collaboratively established an action plan for promoting broadband availability, beginning with simple and sensible ICC reform.

The Solution—Rural Associations’ ICC Reform Proposal:

- The FCC’s efforts to reform universal service are best served by taking simple steps to ensure ICC is not a “moving target.”
- Rather than trying to predict what ICC should look like in a decade and chasing overly complex “comprehensive” reform, the FCC should undertake several straightforward and sensible near-term reforms:
 1. Each RoR regulated carrier should be given the option to unify its interstate and intrastate access rates.
 2. Those RoR regulated carriers opting for unified rates would recover the resulting reductions in ICC through a combination of reasonable end user rates and incremental federal universal service support.
 3. Reasonable end user rates would be identified via a federal benchmark that includes actual rates, interstate and intrastate subscriber line charges, intrastate universal service support, and mandatory extended area charges.
 4. The FCC should also immediately: (a) clarify that *all* providers who use the public switched telephone network to originate and/or terminate calls must pay the applicable intercarrier compensation rates regardless of technology; and (b) strengthen call signaling rules to address “phantom traffic.”
- Through such steps, the FCC can establish a firm near-term foundation for intercarrier compensation, and use that as both an input and a springboard for universal service reform to support broadband networks.
- The FCC could revisit this streamlined ICC regime once a new universal service system is developed and implemented to determine whether further ICC changes are needed to achieve longer-term universal service objectives.

Taking these straightforward, near-term steps will establish a solid foundation for a streamlined intercarrier compensation regime which will set the stage for the necessary broader ICC and universal service reforms that are essential to making universal broadband a reality in rural America.



How to Avoid a “Digital Divide”

The Promise of the National Broadband Plan

The National Broadband Plan (“NBP”) recognizes that “all Americans should have access to broadband service with sufficient capabilities,” and calls broadband “*the great infrastructure challenge of the 21st century.*” The NBP holds great promise for the nation and, in particular for rural areas, in matters ranging from Health Care and Education to Energy and Economic Opportunities.

NECA, NTCA, OPASTCO, and WTA (the “Rural Associations”) applaud the NBP’s objectives, and their member companies have been making substantial strides to carry out the vision of the NBP in the hardest-to-serve, high-cost rural areas. Over the past decade, these companies have used – and continue to rely upon – USF support to invest in and operate advanced network technologies that provide quality voice and broadband services to rural Americans.

Unfortunately, USF reform proposals undercut the promise of the plan. When it comes to paying for this promise, recent focus seems to be on limiting the size of the USF program and redistributing existing resources, rather than ensuring that sustainable, high-speed broadband *becomes and remains available* for all Americans. USF support is needed to serve *both* those consumers who do not have access today, as well as those consumers who enjoy access to broadband today only because USF support enables it. If support for the latter group of consumers is reduced or eliminated, the “backsliding” losses in rural broadband availability could negate or even outweigh gains in other rural service areas. *Both availability and adoption will suffer* if providers cannot afford to maintain high-quality networks, or if they need to charge consumers substantially increased rates to do so.

Networks built only to a 4/1 Mbps standard cannot deliver on long-term national goals. This standard will over time widen the digital gap between rural and urban consumers in contradiction of Section 254(b)(3) of the Communications Act, which requires “reasonably comparable” services and rates. As a result, rural areas risk being left behind. Unlike urban areas where anchor institutions are often nearby, rural businesses and consumers rely on a reliable advanced communications network for many day-to-day needs.

Living up to the Promise – the Rural Associations’ Solutions

To achieve the NBP’s availability, affordability, and adoption objectives, the FCC must ensure that sufficient, predictable, and sustainable USF support is available for broadband services *throughout* rural America. While USF funding is not an infinite resource, 2010 funding levels are insufficient to support deployment and ongoing operation of tomorrow’s high-capacity broadband networks. Comparisons to other federal economic development and infrastructure programs demonstrate how USF funding levels represent a relatively small down payment on “*the great infrastructure challenge of the 21st century.*” The high-cost fund totaled approximately \$4.6 billion in 2009, with less than half of the funding (about \$1.9 billion) going to small rural carriers. By contrast, the 2008 Farm Bill appropriated nearly \$60 billion per year to agricultural programs. And even in a time of severe budgetary challenges, the President’s 2010 budget sought \$42 billion for highway infrastructure and nearly \$11 billion for transit infrastructure.

Resource constraints are an unfortunate reality in today’s economy. But the size and allocation of the USF should be driven primarily by the challenges ahead, and not just by budgetary limits. The FCC should therefore take several steps to address the availability and distribution of USF support before resigning itself to policies that could exacerbate any rural-urban “digital divide” or create entirely new rural-rural “digital divides.”

- The FCC should not target a specific speed. Broadband funding policy should focus on enabling providers-of-last-resort (“POLRs”) to offer *reasonably comparable services at reasonably comparable rates* in accordance with Section 254(b)(3).
- The FCC should *expand the contribution base* to require that all broadband Internet access providers and others whose business models rely upon broadband network access contribute to USF. By spreading the contribution more widely and equitably among different kinds of service providers and businesses that use broadband infrastructure, the FCC could lessen the consumer impact for each assessed service and still reasonably increase the size of the fund as necessary to overcome the challenges ahead.
- The FCC should reduce demand on the high-cost fund and free up funds for additional support requirements by *eliminating the identical support rule and funding only 1 fixed and 1 mobile POLR* in each geographic area.
- For small rural providers, the FCC should replace legacy high-cost funding mechanisms with a new Connect America Fund (“CAF”) after an appropriate transition. The CAF would work in concert with rate-of-return regulation to support the *actual costs* of deploying and operating broadband networks in study areas. Recoverable costs would include “middle mile” and Internet connectivity costs.
- For larger POLRs who have not deployed broadband in rural portions of their serving area, the FCC should establish a separate component of the CAF that is *appropriately tailored to support such deployment.*
- The FCC should *hold all POLRs accountable* to ensure all CAF funds are in fact put toward deployment and continued operation of broadband networks.

High-Cost Universal Service Support – The Overlooked Adoption Success Story

The Challenge of Promoting Adoption

Promoting adoption of broadband services is one of America's most significant communications policy challenges. Broadband adoption is a particularly pressing challenge as civic, economic, educational, and medical interactions increasingly migrate online. Yet a recent Pew Internet Study reports that approximately 21% of adult Americans do not use the Internet. According to one of the primary authors of the National Broadband Plan, a recent FCC study "confirmed what other studies have suggested – that cost is the single largest reason . . . non-adopters do not adopt." The General Accounting Office has likewise observed that the primary national concern today with respect to broadband is not network availability, but rather costs that deter adoption.

Much of the focus on how to address adoption concerns has centered on programs to enable low-income consumers to obtain broadband access. **NECA, NTCA, OPASTCO, and WTA ("Rural Associations") strongly support reasonable and effective efforts to promote adoption, and while the high cost of delivering service is a factor in many rural areas, many of their members are doing what they can to help stimulate adoption through creative education, marketing, and other initiatives.** In light of the relatively low populations in the areas these small rural providers serve, they recognize that it is essential to obtain and retain each and every possible subscriber to make the best possible business case.

Adoption is not a Static Problem – It is an Ongoing and Often Overlooked Challenge

But what is too often overlooked in this debate is the dynamic nature of adoption. Adoption is not just the one-time act of a customer choosing to purchase broadband Internet access. It is also the choice of a customer to pay month after month to **keep using broadband.** While there is an understandable focus on how policy-makers can entice low-income consumers who do not use the Internet today to do so, this is but a small part of a much larger and pervasive challenge. In rural areas, the costs of deploying and operating broadband networks are remarkably high, with individual customer lines often ranging several miles and Internet backbone access points located dozens or hundreds of miles away. Moreover, substantial economies of scale and scope can be difficult to achieve when the market consists of only a few potential subscribers per square or route mile.

The Universal Service Fund Has Been Critical in Addressing Rural Adoption Challenges

The high-cost universal service fund (USF) program has done a remarkable job in helping small rural providers overcome significant cost barriers. It has enabled providers to upgrade multi-use networks in hard-to-serve markets and provide high-quality broadband services. And from an adoption perspective, the high-cost USF program has been critical in ensuring the affordability of services in rural America. The high-cost program supports the delivery of services in areas where network costs are substantially higher than the national average. This means that, without adequate support, many small rural providers would need to charge prices that are significantly higher than their urban counterparts for comparable broadband access, resulting in services that many rural consumers would find unaffordable. This would in turn greatly suppress broadband adoption, making the business case for broadband in rural areas untenable.

This point is lost all too often in the USF reform debate. Some focus on the fact that the USF supports availability, and feel a sense of "mission accomplished" in much of rural America because 92% of small rural company subscribers have access to at least DSL-capable broadband. But this perspective misses the critical role that USF plays in ensuring that high-quality services remain available in rural America and that they remain priced in a way that prompts consumers to keep buying them. It also ignores the fact that, in the substantial majority of cases, the DSL-capable broadband access provided to rural consumers does not today reach the 4/1 Mbps threshold under consideration by the FCC.

The Rural Associations therefore urge policy-makers to take account of all of the critical ways in which USF support enables consumer broadband adoption and access in rural America. Policy-makers must recognize the value of USF both in supporting the deployment of new networks and advancing the quality of existing networks and services, all while maintaining affordability. Reforms that fail to take account of the full extent to which USF supports broadband availability and adoption increase the risk that networks will deteriorate, providers will exit hard-to-serve portions of markets, and/or prices for broadband access will increase – with the consumer bearing the ultimate consequence of any and all such failures.